

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 4440 OF 2004

IN

FIRST APPEAL NO. 643 OF 2004

BINAY BAHADUR SRIVASTAVA .. APPELLANT

Vs.

MUN. CORPN. OF GR. BOMBAY & ORS... RESPONDENTS

Mr. B.B. Srivastava in person

Mr. J. Xavier for BMC

Mr. K. K. Tated AGP

CORAM:-SMT. RANJANA DESAI, J.

DATED:-21-4-2005

P.C.

Appellant in this first appeal has filed this civil application praying that he may be permitted to repair the suit structure so that it is

brought to a safe stage. It is also prayed that the Repair Board be directed to repair the suit structure alongwith the relevant walls of the suit structure, immediately.

2. In the civil application it is stated that the suit structure is not unauthorised and is duly covered under the plan sanctioned by the Corporation, Building Proposal Department on 10/4/81. It is also stated that the suit structure which was raised on wooden joint beams etc. in 1992 or thereabout has over the last 12 years or more decayed and since it is on the props in the last two monsoons, it is presently in a dangerous stage and requires immediate repairs. It is further averred that it may fall down on the residents and visitors of the said building.

3. MHADA has been added as party to this civil application because averments of the application pertain to repairs of the building. MHADA submitted its report dated 2/3/05 about the suit structure. The said report reads thus:

Note:

Sub:-Repairs to the Bldg. No. 30A, Khotachiwadi

This office has carried out structural repair of the
30 A Khotachiwadi, on the portion tallying with block plan.

Landlord Shri B. B. Shrivastava has carried out illegal &

unlawful construction / addition to the said building. As this portion of the bldg is being not tally with block plan (Copy of plan enclose herewith) so question of carrying out any repair in that portion doesn't arise. Applicant is trying to regularize the unauthorized work by getting it repaired through Repair Board.

Copy of the IOD from M.C.G.M. Vide letter No. E.E./373/ dt. 10/4/81 along with plan is enclosed herewith for information it shows that disputed portion was not in existence at that time & that means applicant has carried out the same subsequently later on.

It is further to mention that applicant had filed Writ Petition No. 1352 of 2004 in High Court which is disposed off. Copy of the letter from Government pleader Dt. 24/8/04 which is self explanatory, is enclosed herewith for information.”

4. On behalf of Corporation Shri S. Y. Narwankar, Jr. Engineer, 'D' Ward has filed affidavit. It is stated in the affidavit that the applicant is asking for repairs to the structure for which the Corporation has issued notice under Section 351 of the M.M.C. Act dated 29/11/96 for the unauthorised raising

of the compound wall and covering the open space of the entire building. It is further stated that before issuance of the show cause notice, the respondent Corporation had also issued a stop work notice under Section 354 A of the M. M. C. Act when the work was under progress on 30/10/96. The learned counsel for the Corporation states that despite this notice, the unauthorised work was continued. It is further stated that Executive Engineer, M B R & R Board, Mumbai, has by his letter dated 2/1/04 addressed to the Asstt. Engineer Bldg. & Factories, made a complaint that the appellant has carried out unauthorised construction of mezzanine floor and unauthorised alteration. A copy of the said letter is attached to the reply. It is further stated that plan produced by the Corporation do not reflect the suit structure at all. In the circumstances it is prayed that relief prayed for may not be granted to the appellant/applicant. The appellant has filed affidavit in rejoinder refuting the Corporation's contentions.

5. I have also perused the impugned judgment. In the impugned judgment the trial court has observed that the sanctioned plans were not produced by the appellant. Upon a query made by this court, this court was informed by the appellant that Architect had misplaced the plans and, therefore, the plans could not be produced. I do not propose to go into that aspect at this stage. The fact remains that the sanctioned plan was not produced by the

appellant. A copy of the plan was produced by the defendant. However, the trial court did not find the suit structure in the said plan.

6. In the circumstances aforesaid and in the light of the MHADA's report and the affidavit-in-reply filed by the Corporation it would not be possible for me at this stage to allow the appellant to carry out any repairs to a structure which is held to be unauthorised by the trial court.
7. It is argued that the structure is in a dangerous position, If that is so, since the appellant is the landlord he is solely responsible for it and hence it is advisable that the appellant does not use the said structure till such time as this appeal is finally heard and disposed of. It would be, however, open to the appellant to approach MHADA as well as the Corporation with a representation and if such a representation is made, the authorities may consider it independently and ultimately if any permission is granted the same will be obviously subject to the final outcome of this appeal. If such an application is made the concerned authorities will consider it as expeditiously as possible and at any rate within a period of eight weeks from the receipt thereof.
8. In the circumstances of the case, the appeal is expedited. Liberty to the appellant to move the court after vacation for fixing early date of hearing.
9. Civil Application is disposed of in the aforestated terms.
10. Parties to act on authenticated copy of this order.

